



California Supreme Court Committee on Judicial Ethics Opinions

350 McAllister Street, Room 1144A, San Francisco, California 94102-3688

JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT

[CJEO Draft Formal Opinion 2014-005]

Title

Committee on Judicial Ethics Opinions Draft
Formal Opinion 2014-005;
Accepting Gifts of Little or Nominal Value
Under the Ordinary Social Hospitality
Exception

Action Requested

Review and submit comments by
August 8, 2014

Proposed Adoption Date

To be determined

Prepared by

California Supreme Court Committee on
Judicial Ethics Opinions
Hon. Ronald B. Robie, Chair

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Summary

The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant to California Rules of Court, rule 9.80(j)(2) and CJEO Internal Operating Rules and Procedures, rule 7(d). ([Rule 9.80](#); [CJEO Rules](#).) The public is invited to comment on the draft opinion before the committee considers adoption of an opinion in final form.

CJEO Draft Formal Opinion 2014-005 addresses the ban on gifts and the California Code of Judicial Ethics and provides guidance on accepting gifts of little or nominal value under the ordinary social hospitality exception to the gift ban in canon 4D(6)(g) of the Code of Judicial Ethics. The full text of the draft opinion is attached.

CJEO Draft Formal Opinion 2014-005 has been authorized by the committee for posting and public comment but has not been adopted by the committee in final form. The attached draft opinion is circulated for comment purposes only.

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or withdrawn (rule 9.80(j)(2); CJEO rule 7(d)). Comments are due by August 8, 2014, and may be submitted as described below.

Public comments submitted in response to this Invitation to Comment are confidential communications to the committee and precluded from disclosure under the CJEO rules (rule 9.80(h); CJEO rule 5(b)). However, confidentiality may be waived under those rules (rule 9.80(h)(3); CJEO rule 5(b)(1), (e)) and the committee will post on the CJEO website at the close of the comment period any comments submitted with a statement of waiver of confidentiality or consent to disclose. The online comment form provided on the committee's website includes a waiver option.

CJEO Background

The Committee on Judicial Ethics Opinions was established by the California Supreme Court to provide judicial ethics advisory opinions on topics of interest to the judiciary, judicial officers, candidates for judicial office, and members of the public (rule 9.80(a); CJEO rule 1(a)). In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, the Judicial Council, the Administrative Office of the Courts, and all other entities (rule 9.80(b); CJEO rule 1(a)). The committee is authorized to issue formal written opinions, informal written opinions, and oral advice on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, rules, the decisions of the Supreme Court and the Commission on Judicial Performance, and other relevant sources (rule 9.80(e)(1); CJEO rule 1(b)(1)).

The Draft Opinion

The committee has been asked to provide an opinion on the following question:

May judges accept items of little or nominal value under the ordinary social hospitality exception to the prohibitions against gifts in the California Code of Judicial Ethics?

In the attached draft opinion, the committee discusses the [California Code of Judicial Ethics](#) canons and other authorities applicable to this question and reaches the following conclusions:

Items of little or nominal value when offered for no consideration as social expressions of appreciation, esteem, or geniality are gifts within the meaning of the Code of Judicial Ethics and subject to the canons governing gifts. Under canons 4D(5) and 4D(6), such gifts may not be accepted if (1) they are offered by a party who has or is likely to appear before the judge, (2) they create a perception of influence or favor, or (3) a person aware of the gift would reasonably believe that advantage was intended or would be

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obtained. In the committee's opinion, items of little or nominal value that are not otherwise banned may be accepted under the ordinary social hospitality exception in canon 4(6)(g) if the gift is ordinary by community standards, offered for social traditions or purposes, and hospitable in nature.

Invitation to Comment

The committee invites comment on the attached draft opinion by August 8, 2014. Comments may be submitted:

- online at <http://www.JudicialEthicsOpinion.ca.gov>;
- by email to Judicial.Ethics@jud.ca.gov; or
- by mail to:

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The committee will post on the CJEO website, at the close of the comment period, or after August 8, 2014, those public comments submitted with a statement that confidentiality is waived.

Attachment: CJEO Draft Formal Opinion 2014-005

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**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Draft Formal Opinion No. 2014-005

**ACCEPTING GIFTS OF LITTLE OR NOMINAL VALUE UNDER THE
ORDINARY SOCIAL HOSPITALITY EXCEPTION**

I. Question Presented

The Committee on Judicial Ethics Opinions has been asked to provide an opinion on the following question:

May judges accept items of little or nominal value under the ordinary social hospitality exception to the prohibitions against gifts in the California Code of Judicial Ethics?

II. Summary of Conclusions

Items of little or nominal value when offered for no consideration as social expressions of appreciation, esteem, or geniality are gifts within the meaning of the Code of Judicial Ethics and subject to the canons governing gifts. Such gifts may not be accepted if (1) they are offered by a party who has or is likely to appear before the judge,

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(2) they create a perception of influence or favor, or (3) a person aware of the gift would reasonably believe that advantage was intended or would be obtained. When determining if gifts are otherwise acceptable as ordinary social hospitality, judges should consider whether they are ordinary by community standards, consistent with social traditions, and hospitable in nature.

III. Authorities

A. Applicable Canons¹

Terminology: “‘Gift’ denotes anything of value to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

Canon 1: “An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective. . . .”

Canon 2A: “A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . .”

Advisory Committee Commentary following canon 2A: “. . . A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly. [] The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence. . . .”

¹ All further references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Canon 2B: “(1) A judge shall not allow . . . social . . . relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge. [] (2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including . . . to advance the pecuniary or personal interests of the judge or others.”

Canon 3C(3): “A judge shall require staff and court personnel under the judge’s direction and control to observe appropriate standards of conduct . . . in the performance of their duties.”

Canon 4A: “A judge shall conduct all of the judge’s extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge’s capacity to act impartially;
- (2) demean the judicial office;
- (3) interfere with the proper performance of judicial duties; or
- (4) lead to frequent disqualification of the judge.”

Advisory Committee Commentary following canon 4A: “Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. . . . [] Because a judge’s judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.”

Canon 4D(5): “Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. . . .”

Advisory Committee Commentary following canon 4D(5): “In addition to the prohibitions set forth in Canon 4D(5) regarding gifts, other laws may be applicable to judges, including, for example, Code of Civil Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.). . . . [] The application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.”

Canon 4D(6): “A judge shall not accept . . . a gift, bequest, favor, or loan from anyone except as hereinafter set forth, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

“[¶] . . . [¶]

“(g) ordinary social hospitality; . . .”

Advisory Committee Commentary following canon 4D(6)(g): “Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity, impartiality, or independence of the judiciary. See Canon 2A.”

B. Other Authorities

California Code of Civil Procedure, section 170.9.

Government Code, sections 81000 et seq.

Adams v. Commission on Judicial Performance (1995) 10 Cal.4th 866, 903-906.

Inquiry Concerning Wasilenko (2005) 49 Cal.4th CJP Supp. 26.

Commission On Judicial Performance, Annual Report (1992), Private Admonishments B and H, pp. 12-13 and Advisory Letters 15 and 17, p. 15, Annual Report (1998), *Inquiry Concerning Judge Shook*, Public Admonishment, pp. 24-26, Annual Report (2002), Private Admonishment 3, p. 22.

California Judges Association, Ethics Committee Advisory Opinion 43.

Rothman, California Judicial Conduct Handbook (3d ed. 2007) sections 9.30, 9.37, 9.38, 9.44, 9.52, 9.57, append. 10 (2013 Supp.).

Geyh et al., *Judicial Conduct and Ethics* (5th ed. 2013) section 7.14[5].

IV. Discussion

A. Introduction

In the course of their daily lives, judges are sometimes offered items of little or nominal value as tokens of appreciation, expressions of esteem, acts of generosity, or gestures of geniality. The personal and professional circumstances in which these items are offered are as varied as the items themselves. Examples provided to the committee include: a homemade food item brought to the judge by a juror; a coupon or gift card

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redeemable for a cup of coffee offered to a judge who has provided volunteer services; a baseball cap or jersey from the hometown team or the judge's alma mater; a bottle of wine offered at a holiday by a neighbor; a ticket to a local sporting or cultural event offered by an acquaintance; pizza delivered by a law firm to courtroom staff following a long trial. As varied as the examples are, the items are similarly low in extrinsic dollar value but high in intrinsic social value.

These items present ethical questions for judges because the canons prohibit the receipt of gifts except in the narrowest of circumstances. A judge may not accept gifts or favors under any circumstances from a party who has or is likely to appear before the judge (canon 4D(5)). A judge also may not accept a gift from a non-party if the gift would reasonably be perceived as intended to influence the judge in the performance of judicial duties (canon 4D(6)). Even when not prohibited under either of these provisions, gifts may only be accepted if they fall within specified exceptions, one of which is "ordinary social hospitality" (canon 4D(6)(g)).

The gracious and spontaneous offering of the small value items the committee has been asked to examine might lead an unwary judge to accept them based on several faulty assumptions. One is that the items are de minimis and therefore do not fall within the gift ban in the canons. Another incorrect assumption is that the ordinary social hospitality exception is a catch-all covering any circumstance not otherwise specified in the gift exceptions. And finally, because the items are relatively insignificant in value, a judge might erroneously assume that any ethical violation incurred by acceptance would also be insignificant and easily cured by disclosing the gift or donating it to others.

The committee has been asked for guidance on avoiding these pitfalls. This opinion addresses whether items of little or nominal value are gifts within the meaning of the Code, and if so, how to determine whether they may or may not be accepted under the gift canons, and specifically, the ordinary social hospitality exception.

B. Gifts Defined

The Code of Judicial Ethics defines a gift as “anything of value to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Code Jud. Ethics, Terminology, “Gift.”) This definition was added by amendment to the terminology section of the Code in 2013. Prior to the amendment, there was some question as to whether an item of nominal value constituted a gift (see Cal. Judges Assoc., Formal Ethics Opinion No. 43 (1994, rev. 1996) p. 2 [only when property exchanged without consideration is truly “de minimis” can it be said that it does not constitute a gift] (CJA Opinion No. 43)). Under the broad definition provided in the terminology section, gifts are “anything of value.” Even gifts of nominal value, therefore, are subject to the canons that govern gifts.

The Code definition of a gift references consideration, price, and the regular course of business, which suggests that a way to determine if an item is “anything of value” is to consider whether it could be exchanged for consideration on the open market. For example, commercially purchased food has market value by virtue of its purchase and would fall within the definition of a gift. Even homemade food items have a value because of the purchased ingredients and individual effort in preparation. In either case, when a judge or the judge’s staff² is offered such an item, the judge must consider the item a gift governed by the canons.

² Items offered to staff that are related to court business fall within the canons governing gifts (canon 3C(3) [judges must require staff and court personnel under their direction and control to observe appropriate standards of conduct in the performance of their duties]; Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007), § 9.57, pp. 503-504).

C. Canons Governing Gifts³

The canons prohibiting acceptance of gifts are fundamental to the principles of judicial independence and integrity: the purpose of the general gift ban is to ensure impartial decisions. “When a judge receives something of value from a litigant or a lawyer, there exists the potential that, at best, it will be perceived that the donor will receive some advantage from the judge or, at worst, that a bribe has been given.” (Rothman, *supra*, § 9.30, p. 471.) To fulfill that purpose, canon 4D(5) prohibits gifts under any circumstance and without exception from “a party whose interests have come or are reasonably likely to come before the judge.” Canon 4D(6) extends the prohibition to gifts from a non-party, except in specified circumstances, and even in those circumstances, “provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties.” The specified exceptions to the non-party gift ban include “ordinary social hospitality” (canon 4D(6)(g)).⁴

Read together, canons 4D(5) and 4D(6) require that when offered a gift of nominal value, a judge must consider three questions in order to determine if the gift might be

³ Section 170.9 of the Code of Civil Procedure also governs gifts and sets dollar limitations on gifts a judge is permitted to accept even if they are otherwise permissible under the Code of Judicial Ethics, which sets no monetary limit. Specifically, section 170.9 currently sets a \$390 limit on gifts a judge is permitted to accept from a non-party under several exceptions in canon 4D(6), including the ordinary social hospitality exception in canon 4D(6)(g). (Cal. Code Civ. Pro., § 170.9(f); see Rothman, *supra*, append. 10 (2013 Supp.), pp. 7-12.) This opinion does not address section 170.9 because gifts of nominal value fall below the set limit and would not otherwise be prohibited under the statute. This opinion also does not address financial interest disclosure and reporting requirements for gifts under the Political Reform Act of 1974 (see Gov. Code §§ 8100 et seq. and Cal. Code Regs., tit. 2, §§18110 et seq.; Rothman, *supra*, append. 10 (2013 Supp.), p. 12 (Rothman and MacLaren Guide to the No-Gift Rule).)

⁴ As Judge Rothman notes, donation of a gift is not a specified exception to the ban on gifts in canons 4D(5) or canon 4D(6). (Rothman, *supra*, § 9.51, pp. 496-497.) Accepting improper gifts and donating or re-gifting them to charity does not avoid a violation of the Code of Judicial Ethics. (*Id.*)

accepted: (1) Is it offered by a party? (2) Would acceptance create a perception of influence? and (3) Is it otherwise acceptable as ordinary social hospitality?

1. Gifts Offered by a Party Are Banned

Canon 4D(5) prohibits acceptance of gifts from a party whose interests have come or are reasonably likely to come before the judge. On its face, this broadly includes past, present, and future parties. No exceptions or time limits are provided in the text of canon 4D(5) so it would appear that the absolute ban on gifts from parties extends to any party who has or will appear before the judge in the judge's career. (Rothman, *supra*, § 9.37, pp. 478-499, append. 10 (2013 Supp.), p. 4 (Rothman and MacLaren Guide to the No-Gift Rule) [canon 4D(5) ban on party gifts lasts forever].)

A judge offered a gift of little or nominal value will know if the person offering the gift is a current party and has a duty to know whether the person offering the gift is a former party. Under either circumstance, the judge may not accept the gift even if it is offered in the context of ordinary social hospitality.

If the gift is not offered by a former or current party, the judge must next consider whether the person offering the gift is reasonably likely to appear before the judge in the future. The Advisory Committee commentary to canon 4D(5) acknowledges that “[t]he application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.” (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 4D(5).)

Although the list of reasonably likely parties could theoretically include anyone in the world, Judge Rothman observes that, in practical terms, the circumstances in which a judge may accept a gift are limited by the exceptions in 4D(6)(a)-(j), and in those circumstances, the judge will be in a position to know or find out whether the donor is reasonably likely to appear (Rothman, *supra*, § 9.37, pp. 479-498, append. 10 (2013 Supp.), p. 4 (Rothman and MacLaren Guide to the No-Gift Rule). The committee agrees

that judges will know or be able to reasonably determine if a person offering a gift of little or no value is likely to appear as a party before the judge.

The committee notes, however, that the size of the community and of the judge's court may factor into the likelihood of someone appearing before the judge. Although the prohibition against accepting gifts from a party applies equally to all judges, the reasonable likelihood of a party appearing before a judge varies with the circumstances of the judge's position and the community in which the judge sits. (*Inquiry Concerning Wasilenko* (2005) 49 Cal.4th CJP Supp. 26, 46 [canons impose uniform statewide standards although ethical duties may arise more frequently in a small town where a judge knows a party than in a major metropolitan area].) If a judge is one of very few bench officers in a small community, the likelihood of hearing any particular community member's matter is relatively high compared to that of a judge who is one of hundreds of judicial officers in a geographically large or densely populated community.

Because attorneys are not parties, gifts from attorneys are not subject to the absolute ban on gifts from parties imposed by canon 4D(5). (Rothman, *supra*, § 9.38, p. 480, append. 10 (2013 Supp.), p. 4 (Rothman and MacLaren Guide to the No-Gift Rule).) However, gifts from attorneys who appear before judges in the course of business may create a perception of influence, which would preclude acceptance under canon 4D(6), as discussed below.

2. *Non-Party Gifts That Raise a Perception of Influence Are Banned*

Canon 4D(6) prohibits judges from accepting gifts from a *non-party* that would reasonably be perceived as intended to influence the judge in the performance of judicial duties. Canon 4D(6) underscores that judicial impartiality is so fundamental to the public's trust in the integrity of the judiciary that it is repeated throughout the Code.⁵ The

⁵ See canons 1 [upholding the integrity and independence of the judiciary], 2 [avoiding impropriety and the appearance of impropriety in all activities], 2A [promoting

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test for the appearance of impropriety is an objective one: “whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.” (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. Canon 2A.)

Judges offered gifts of nominal value from a non-party must apply this objective test to determine if acceptance would create a perception of influence. Gifts offered by attorneys must be closely scrutinized. In *Adams v. Commission* (9195) 10 Cal.4th 866 (*Adams*), the court found that accepting gifts from attorneys that appeared before the judge is “inherently wrong” and “has a subtle, corruptive effect, no matter how much a particular judge may feel that he is above improper influence.” (*Id.*, p. 879.) Although in *Adams* the particular attorneys regularly appeared before the judge, the committee agrees with Judge Rothman that “[i]n light of this very strong statement from the California Supreme Court, whenever a judge is offered a gift from a lawyer or law firm the judge should view the offer as presumptively improper.” (Rothman, *supra*, § 9.52, p. 497.) Indeed, when judges have been disciplined for improperly accepting gifts, the donor has most often been an attorney.⁶ Judges offered gifts of even nominal value from attorneys should presume they are likely to be improper and carefully consider whether a person aware of the gift might entertain a reasonable perception of influence.

public confidence], 2B(1) [improper to permit others to convey a position of influence], and 4A(1) [prohibiting conduct that casts reasonable doubt on the judge’s capacity to act impartially].

⁶ See *Adams, supra*, 10 Cal. 4th at p. 897-901 [improper gifts of dinner, computer, fee write offs, condo, and fishing trip from attorneys]; *Inquiry Concerning Judge Shook*, Comm. On Jud. Performance, Ann. Rep. (1998), Public Admonishment, pp. 24-26 [improper gifts of lunch and transport for the judge and judge’s staff by an attorney]; Comm. on Jud. Performance, Ann. Rep. (1992), Private Admonishments B and H, pp. 12-13 and Advisory Letters 15 and 17, p. 15 [improper unspecified gifts from attorneys who practiced before the judges]; Comm. on Jud. Performance, Ann. Rept. (2002), Private Admonishment 3, p. 22 [improper unspecified gifts from attorneys].

Once a judge has determined that a gift of little or nominal value is not offered by a past, present or future party (canon 4D(5)) and does not create a perception of influence (canon 4D(6)), the judge must consider whether the gift falls within the exception for ordinary social hospitality.

3. *The Ordinary Social Hospitality Exception*

Canon 4D(6)(g) excepts a gift offered in the context of “ordinary social hospitality,” provided the gift is not otherwise prohibited under canon 4D(5) and 4D(6).⁷ Although the term “ordinary social hospitality” is not defined in the Code, guidance is provided elsewhere.

Seeking to address when invitations to social events hosted by attorneys cease to be ordinary social hospitality and become unacceptable gifts, the California Judges Association (CJA) provides the following definition in an advisory opinion:

“‘[O]rdinary social hospitality’ . . . is that type of social event or other gift which is so common among people in the judge’s community that no reasonable person would believe that (1) the donor was intending to or would obtain any advantage or (2) the donee would believe that the donor intended to obtain any advantage.” (CJA Opinion No. 43, *supra*, p. 4.)

This definition has been cited in a wide variety of jurisdictions and sources (*Adams, supra*, 10 Cal.4th at p. 880; Rothman, *supra*, § 9.44, p. 489; Geyh, *supra*, § 7.14[5], p. 7-57; Ariz. Jud. Ethics Advis. Comm., Opinion 95-13, pp. 1-2; Okla. Jud. Ethics Advis. Panel, Opinion 2005-1, p. 2). The committee agrees with this definition, which incorporates the prohibitions of canons 4D(5) and 4D(6), as discussed above, and

⁷ As the Advisory Committee commentary cautions, “[a]lthough Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. . . . [and] should also consider whether acceptance would affect the integrity, impartiality, or independence of the judiciary.” (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 4D(6)(g).)

focuses on a reasonable perception of an intent to gain advantage. (See *Adams, supra*, 10 Cal.4th at p. 880 [“in determining the propriety of activity that arguably might qualify as social hospitality, the focus is upon the reasonable perceptions of an objective observer”].)

CJA Opinion No. 43 also focuses on the “commonness” of the gift in the judge’s community. This focus reflects the concept “that within a judges’ community, residents will socialize in the normal course of their lives and that judges should not be barred from joining them.” (Geyh et al., *Judicial Conduct and Ethics* (5th ed. 2013) § 7.14[5], p. 7-57 (Geyh); see also Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 4A [complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives].) The words of the ordinary social hospitality exception reflect that concept and provide analytical tools for judges to use in determining whether the exception applies to gifts they have determined are not otherwise banned under canons 4D(5) and (6).

a. Ordinary

Ordinary social hospitality gifts are those that are ordinary by community standards (CJA Opinion No. 43, *supra*, p. 4, factor 1). In the context of a gift of nominal value, a judge should consider whether the gift appears customary or reasonable, rather than excessive, in the community in which it is offered. A gift that would fall within the exception would be one that is ordinarily exchanged among members of the community. A gift card offered in thanks to volunteers, for example, may be an ordinary and reasonable practice in some communities, but not in others.

b. Social

Social traditions and purposes are also indicators of whether gifts are ordinary social hospitality (CJA Opinion No. 43, *supra*, p. 4, factors 2, 6). Judge Rothman makes

the distinction between relationships for the purpose of socializing and relationships for the purpose of advancing business interests. (Rothman, *supra*, § 9.44, p.p. 489-490.) Gifts that have a business purpose or advance the business interests of the person offering the gift do not fall within the ordinary social hospitality exception. (*Id.*; see canon 2B(2) [prohibiting use of prestige of office for personal or pecuniary advantage of others].) When offered a gift of nominal value, a judge should consider whether it is something that would traditionally be offered in circumstances involving socializing rather than business.

Careful consideration of this distinction should be given in the example of a baseball cap or jersey bearing the logo of the hometown team or the judge's alma mater. Is the cap being offered for the purpose of socializing as opposed to advancing the interests of the team or school, and is it traditionally offered regardless of judicial office?

c. Hospitality

Gifts of ordinary social hospitality must also be hospitable in nature and bear some relationship to hosting or being hosted. A judge's own social conduct is a reasonable measure of hospitality (CJA Opinion No. 43, *supra*, p. 4, factors 3, 5). If the judge is hosting a social event, is the gift being offered something the judge would give a host if the judge were a guest? If the judge is a guest, is the gift something the judge would offer his or her guests when hosting a similar event? A history of reciprocal hospitality between the judge and the person offering the gift supports an inference that the gift is ordinary social hospitality. A gift that is commensurate with the occasion is also hospitable in nature, such as a bottle of wine offered at a holiday by a neighbor. A gift of a ticket to a local sporting or cultural event offered by an acquaintance, however, may not

qualify as hospitality. If the acquaintance is not hosting the event, and the judge will not be the acquaintance's guest, the ticket may not be hospitable in nature.⁸

VI. Conclusions

Items of little or nominal value are subject to the canons governing gifts. Under canons 4D(5) and 4D(6), judges may not accept items of little or nominal value if the gift is offered by a party, if acceptance of the gift would create a perception of influence, or if a reasonable person would believe that advantage was intended or would be obtained by acceptance of the gift.

In the committee's opinion, items of little or nominal value that are not otherwise banned may be accepted under the ordinary social hospitality exception in canon 4(6)(g) if the gift is ordinary by community standards, offered for social traditions or purposes, and hospitable in nature.



This opinion is advisory only (Cal. Rules of Court, rules 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rules 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the
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⁸ Judge Rothman provides a similar example of an attorney who offers a judge two tickets to a professional sporting event that the attorney cannot use (Rothman, *supra*, § 9.52, p. 498). He similarly concludes that it would not be appropriate for the judge to accept the tickets, unless the relationship with the attorney is such that the judge would not sit on any case involving the attorney. For support, he cites another exception under canon 4D(6) allowing gifts from a person whose preexisting relationship with the judge would require disqualification (*id.*, citing former canon 4D(6)(f), now canon 4D(6)(a)). Although this opinion examines only the ordinary social hospitality exception, Judge Rothman's example illustrates that judges may want to be familiar with all of the canon 4D(6) exceptions when considering whether gifts that are not otherwise banned may be accepted.